

MEMORANDUM

NATIONAL SECURITY COUNCIL

3360

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ACTION
April 27, 1972

(Handwritten mark)

MEMORANDUM FOR MR. KISSINGER

FROM: Helmut Sonnenfeldt *(Handwritten mark)*

SUBJECT: Reply to Soviet Complaint about our Nuclear
Fuel Supply Policy

State has sent you under cover of a memorandum (Tab A) a proposed statement (Tab B) for Assistant Secretary Hillenbrand to make to Dobrynin about delivery of US nuclear material to EURATOM countries after March 1, 1972. Hillenbrand intends to make the statement orally as soon as possible. State requests an NSC clearance.

This complicated issue is worth detailed explanation since it might conceivably become an irritant in US-Soviet relations if current prospects for an early IAEA-EURATOM agreement on safeguards over nuclear materials should prove illusory. You should be alert to this possibility, even though it does not seem likely now, according to ACDA.

Background

Non-Proliferation Treaty Article III (2) and (4).

Paragraph (2) provides that parties to the NPT (and we are one) undertake not to provide nuclear material "to any non-nuclear weapon State ..." (and all the EURATOM states are, except of course for France) ... unless the ... material shall be subject to safeguards required by this article."

Paragraph (4) provides that parties to the treaty must conclude safeguard agreements with the International Atomic Energy Agency (IAEA) within two years after the treaty enters into force -- i.e., by March 1, 1972. Otherwise, as per paragraph (2) they can no longer be provided with nuclear material since such material would not be subject to treaty-approved safeguards. The Soviets have been interpreting this two-year "guillotine" paragraph as applying to non-parties to the treaty (including, among others, the EURATOM states) since the treaty was signed. We have tended to agree with them because we want to use the leverage of a potential cutoff of nuclear materials to get non-nuclear weapons states to sign and ratify.

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-2-

EURATOM-IAEA Negotiations

EURATOM states (except France, a nuclear weapons state), when they signed the NPT, indicated they wouldn't ratify it, until they had negotiated with IAEA the safeguards agreements required by Article III (2) and (4). Negotiations between EURATOM and IAEA didn't begin until November 1971. The negotiations have been conducted in good faith since, with what ACDA believes are excellent prospects for successful conclusion in the "near future." The late starting date left little time until the paragraph (4) deadline of March 1, 1972. Our EC mission in Brussels (cable at Tab C) foresees conclusion by July.

Soviet Position

On March 17, Vorontsov in a low key noted to ACDA that Moscow might "misunderstand" our continued shipment of nuclear materials to EURATOM in view of Article III (2) obligations. On April 10, Dobrynin raised the issue with Hillenbrand formally in an oral statement (at Tab D, with a typo in the second line of para 2, which should read March 1, 1972). The statement argues that continued delivery to the EURATOM states without a safeguards agreement with IAEA constitutes a "clear violation" of Article III on our part. It asks for "clarification."

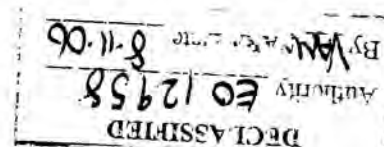
Comment: The Soviet complaints have been restrained and they have not pressed the point. They are probably intent mainly on building a record of protest for eventual use in case the IAEA-EURATOM negotiations should fail. In that case, we would be in the more difficult position of trying to justify continued delivery of nuclear materials to our allies in EURATOM without the safeguards envisaged in Article III.

Our Position

As early as January 1969, Secretary Rogers told the Senate that if the EURATOM countries had not concluded a safeguards agreement with IAEA when the "guillotine" deadline came, we would have to consider the "rule of reason." That has been our position since.

Anticipating Soviet complaints when the deadline arrived, we instructed our IAEA mission last February in a cable cleared by the NSC (Tab E) that to tell the Soviets, if they raised the issue, that (a) since both EURATOM and IAEA were negotiating in good faith with good prospects of success; (b) we would continue to supply EURATOM with nuclear material on an

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- 3 -

"interim basis;" (c) this was in accord with the "rule of reason;" and (d) to do otherwise would impede progress in the negotiations and undermine the prospects for adherence to the NPT.

Hillenbrand's proposed reply to Dobrynin in effect lays out this position formally. ACDA made this same argumentation to the Senate Foreign Relations Committee in a statement which has been made part of the SFRC's public record on the ACDA appropriation -- and hence no doubt noted by the Soviets.

RECOMMENDATION

I recommend that you authorize me to clear Assistant Secretary Hillenbrand's proposed statement to Dobrynin, which is fully in line with current policy. John Walsh concurs.

Approve _____

Disapprove _____

[Handwritten signature]

— Livingston notified State by phone 5/23. To be followed by written confirmation by Mrs. Davis.

cc: John Walsh

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